LAW AND PARLIAMENTARY AFFAIRS SECRETARIAT

Notification No. LAW 14 LCA 1976.

Bangalore, dated 5th April 1976.

Ordered that the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (Act No. 13 of 1976) published in Part II Section 1 of the *Gazette of India*, Extraodinary dated 25th January 1976 be republished in the *Karnataka Gazette*, for general information.

By Order and in the name of the Governor of Karnataka

B. NAGESHA RAO,

Under Secretary to Government,

4 *Department of Law and Parly. Affairs.*

GOVERNMENT OF INDIA

THE SMUGGLERS AND FOREIGN EXCHANGE MANIPULATORS (FORFEITURE OF PROPERTY) ACT, 1976

ACT No. 13 of 1976

Assented to on 25th Jannary, 1976

ARRANGEMENT OF SECTIONS

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THE SMUGGLERS AND FOREIGN EXHCANGE MANIPULATORS (FORFEITURE OF PROPERTY) ACT, 1976

AN

ACT

to provide for the forfeiture of illegally acquired properties of of smugglers and foreign exchange manipulators and for matters connected therewith or incidental thereto.

WHEREAS for the effective prevention of smuggling activities and foreign exchange manipulations which are having a deleterious effect on the national economy it is necessary to deprive persons engaged in such activities and manipulations of their ill-gotten gains;

AND WHEREAS such persons have been augmenting such gains by violation of wealth-tax, income-tax or other laws or by other means and have thereby been increasing their resources for operating in a clandestine manner;

AND WHEREAS such persons have in many cases been holding the properties acquired by them through such gains in the names of their relatives, associates and confidants;

BE it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows :—

1. (1) **Short title, extent and commencement.**—This Act may be called the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976

(2) It extends to the whole of India except the State of Jammu and Kashmir

(3) It shall be deemed to have come into force on the 5th day of November, 1975.

2. **Application**—(1) The provisions of this Act shall apply only tothe persons specified in sub-section (2).

(2) The persons referred to in sub-section (1) are the following, namely: :—

(a) every person—

(i) who has beed convicted under the Sea Customs Act, 1878 (8 of 1878) or the Customs Act, 1962, (52 of 1962) of an offence in relation to goods of a value exceeding one lakh of rupees ; or

(ii) who has been convicted under the Foreign Exchange Regulatioct Act, 1947, (7 of 1947) or the Foreign Exchange Regulation Act, 1973, (46 of 1973,) of an effence, the amount or value involved in which exceeds one lakh of rupees ; or

(iii) who having been convicted under the Sea Customs Act, 1878, (8 of 1878) or the Customs Act, 1962, (52 of 1962) has been convicted subsequently under either of those Acts ; or

(iv) who having been convicted under the Foreign Exchange Regulation Act, 1947, (7 of 1947) or the Foreign Exchange Regulation Act, 1973. (46 of 1973) has been convicted subsequently under either of those Acts.

(b) every person in respect of whom an order of detention has been made under the Conservation of Foreign Exchane and Prevention of Smuggling Activities Act, 1974 (52 of 1974)

Provided that—

(i) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board or before making a reference to the Advisory Board ; or

(ii) such order detention, being an order to which the provision of section 9 of the said Act apply, has not been revoked before the expiry of the time for or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9, of the said Act ; or

(iii) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of that Act ; or

(iv) such order of detention has not been set aside by a court of competent jurisdiction ;

(c) every person who is a relative of a person referred to in clause (a) or clause (b) ;

(d) every associate of a person refer red to in clause (a) or clause (b) ;

(e) any holder (hereafter in this clause referred to as the present holder) of any property which was at any time previously held by a person referred to in clause (a) or clause (b) unless the present holder or, as the case may be, any one who held such property after such person and before the present holder, is or was a transferee in good faith for adequate consideration.

Explanation 1.—For the purposes of sub-clause (i) of clause (a), thevalue of any goods in relation to which a person

has been convicted of an offence shall be the wholesale price of the goods in the ordinary course of trade in India as on the date of the commission of the offence.

Explanation 2 —For the purposes of clause (c) "relative" in relation to a person, means—

(i) spouse of the person ;
(ii) brother or sister of the person ;
(iii) brother or sister of the spouse of the person;
(iv) any lineal ascendant or descendant of the person ;
(v) any lineal ascendant or descendant of the spouse of the person ;
(vi) spouse of a person referred to in clause (ii), clause (iii), clause (iv) or clause (v) ;
(vii) any lineal descendant of a person referred to in clause (ii) or clause (iii)

Explanation 3 —For the purposes of clause (d), "associate", in relation to a person, means—

(i) any individual who had been or is residing in the residential premises (including outhouses) of such person ;

(ii) any individual who had been or is managing the affairs or keeping the accounts of such person ;

(iii) any association of persons, body of individuals, partnership firm, or private company within the meaning of the Companies Act, 1956 (1 of 1956) of which such person had been or is a member, partner or director ;

(iv) any individual who had been or is a member, partner or director of an association of persons, body of individuals, partnership firm or private company referred to in clause (iii) at any time when such person had been or is a member, partner or director of such association, body partnership firm or private company ;

(v) any person who had been or is managing the affairs, keeping the accounts, of any association of persons, body of individuals, partnership firm or private company referred to in clause (iii) ;

(vi) the trustee of any trust, where—

(a) the trust has been created by such person; or

(b) the value of the assets contributed by such person (including the value of the assets, If any, contributied by him earlier) to the trust amounts, on the date on which the contribution is made, to not less than twenty per cent of the value of the assets of the trust on that date ;

(vii) where the competent authority, for reasons to be recorded in writing, considers that any properties of such person are held on his behalf by any other person, such other person.

Explanation 4.—For the avoidance of doubt, it is hereby provided that the question whether any person is a person to whom the provisions of this Act apply may be determined with referance to any facts, circnmstances or events (including any conviction or detention) which occurred or took place before the commencement of this Act.

3. (1) **Definitions**—.In this Act, unless the context otherwise requires—

(a) "Appellate Tribunal" means the Appellate Tribunal for Forfeited Property constituted under secton 12

(b) "competent authority" means an officer of the Central Government authorised by it under sub-section (1) of section 5 to perform the functions of a competent authority under this Act ;

(c) "illegally acquired property", in relation to any; person to whom this Act applies. means—

(i) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under any law for the time being in force relating to any matter in respect of which Parliament has power to make laws ; or

(ii) any property acquired by such person, whether before or after the commencement of this Act, wholly or

partly out of or by means of any income, earnings or assets in respect of which any such law has been contravened; or

(iii) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets the source of which cannot be proved and which cannot be shown to be attributable to any act or thing done in respect of any matter in relation to which Parliament has no power to make laws ; or

(iv) any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property referred to in sub-clauses (i) to (iii) or the income or earnings from such property ;

and includes—

(A) any property held by such person which would have been, in relation to any previous holder thereof illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration ;

(B) any property acquired by such person, whether before or after the commencement of this Act, for a consideration or by any means, wholly or partly traceable to any property falling under item (A), or the income or earnings therefrom ;

(*d*) " prescribed " means prescribed by rules made under this Act ;

(*e*) " property " includes any interest in property, movable or immovable :

(f) " trust " includes any other legal obligation.

(2) Any reference in this Act to any law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any in force in that area.

(3) Any reference in this Act to any officer or auth ority shall, in relation to any area in which there is n officer or authority with the same designation, be cons trued as a reference to such officer or authority as may b specified by the Central Government by notification in th Official Gazette.

4. Prohibition of holding illegally acqvired property (1) As from the commencement of this Act, it shall not b lawful for any person to whom this Act applies to hold an illegally acquired property either by himself or throug any other person on his behalf.

(2) Where any person holds any illegally acquire property in contravention of the provisions of sub-sectio (1), such property shall be liable to be forfeited to th Central Government in accordance with the provisions o this Act.

5. Competent authority.—(1) The Central Govern ment may, by order published in the Official Gazette authorise as many officers of the Central Government (no below the rank of a Joint Secretary to the Government) as it thinks fit, to perform the functions of the competen authority under this Act.

(2) The competent authorities shall perform thei functions in respect of such persons or classes of persons a the Central Government may, by order, direct.

6. Notice of forfeiture —(1) If, having regard t the value of the properties held by any perso n to whor this Act applies either by himself or through any othe person on his behalf, his known sources of income, earning or assets, and any other information or meterial availabl to it as a result of action taken under section 18 or othe wise the competent authority has reason to believe (th reasons for such belief to be recorded in writing) that a or any of such properties are illegally acquired propertie it may serve a notice upon such person (hereinafte referred to as the person affected) calling upon him withi such time as may be specified in the notice, which sha

not be ordinarily less than thirty days, to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Act.

(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

7. Forfeiture of property in certain cases.—(1) The competent authority may, after considering the explanation, if any, to the show-cause notice issued under section 6, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties.

(2) Where the competent authority is satisfied that some of the properties referred to in the show-cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and record a finding according under sub-section (1).

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Act, stand forfeited to the Central Government free from all encumbrances.

(4) Where any shares in a company stand forfeited to the Central Government under this Act, then, the

company shall, notwithstanding anything contained in the Companies Act, 1956, (1 of 1956) or the articles of association of the company, forthwith register the Central Government as the transferee of such shares.

8. **Burden of proof.**—In any proceedings under this Act, the burden of proving that any property specified in the notice served under section 6 is not illegally acquired property shall be on the person affected.

9. **Fine in lieu of forfeiture.**—(1) Where the competent authority makes a declaration that any property stands forfeited to the Central Government under section 7 and it is a case where the source of only a part, being less than one-half, of the income, earnings or assets with which such property was acquired has not been proved to the satisfaction of the competent authority, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to one and one-fifth times the value of such part.

Explanation.—For the purposes of this sub-section, the value of any part of income, earnings or assets, with which any property has been acquired, shall be,—

(*a*) in the case of any part of income or earnings, the amount of such part of income or earnings;

(*b*) in the case of any part of assets, the proportionate part the full value of the consideration for the acquisition of such assets

(2) Before making an order imposing a fine under sub-section (1), the person affected shall be given a reasonable opportunity of being heard.

(3) Where the person affected pays the fine due under sub-section (1), within such time as may be allowed in that behalf the competent authority may, by order, revoke the declaration of forfeiture under section 7 and thereupon such property shall stand released.

10. **Procedure in relation to certain trust properties.**—In the case of any person referred to in clause (*vi*

of *Explanation* 3 to sub-section (2) of section 2, if the competent authority, on the basis of the information and materials available to it, has reason to believe (the reasons for such belief to be recorded in writing) that any property held in trust is illegally acquired property, it may serve a notice upon the author of the trust or, as the case may be, the contributor of the assets out of or by means of which such property was acquired by the trust and the trustees, calling upon them within such time as may be specified in the notice which shall not ordinarily be less than thirty days, to explain the source of the money or other assets out of or by means of which such property was acquired or, as the case may be, the source of the money or other assets which were contributed to the trust for acquiring such property and thereupon such notice shall be deemed to be a notice served under section 6 and all the other provisions of this Act shall apply accordingly.

Explanation.—For the purposes of this section "illegally acquired property", in relation to any property held in trust, includes—

(*i*) any property which if it had continued to be held by the author of the trust or the contributor of such property to the trust would have been illegally acquired property in relation to such author or contributor;

(*ii*) any property acquired by the trust out of any contributions made by any person which would have been illegally acquired property in relation to such person had such person acquired such property out of such contributions.

11. Certain transfers to be null and void.—Where after the issue of a notice under section 6 or under section 10, any property referred to in the said notice is transferred by any mode whatsoever such transfer shall, for the purposes of the proceedings under this Act, be ignored and if such property is subsequently forfeitey to the Central Government under section 7, then the transfer of such property shall be deemed to be null and void.

12 Constitution of Appellate Tribunal.—(1) The Central Government may, by notification in the Official Gazette, constitute an Appellate Tribunal to be called the Appellate Tribunal for Forfeited Property consisting of a Chairman and such number of other members (being officers of the Central Government not below the rank of a Joint Secretary to the Government) as the Central Government thinks fit to be appointed by that Government for hearing appeals against the orders made under section 7, sub section (1) of section 9 or section 10.

(2) The Chairman of the Appellate Tribunal shall be a person who is or has been or is qualified to be a Judge of the Supreme Court or of a High Court.

(3) The terms and conditions of the Chairman and other members shall be such as may be prescribed.

(4) Any person aggrieved by an order of the competent authority made under section 7, sub-section (1) of section 9 or section 10, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal:

Provided that the Appellate Tribunal may entertain any appeal after the said period of forty five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(5) On receipt of an appeal under sub-section (4), the Appellate Tribunal may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further enquiry as it deems fit, confirm, modify or set aside the order appealed against.

(6) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches consisting of three members and constituted by the Chairman of the Appellate Tribunal.

(7) The Appellate Tribunal may regulate its own procedure.

13. Notice or order not to be invalid for error in description. No notice issued or served no declaration made, and no order passed, under this Act shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein if such property or person is identifiable from the description so mentioned.

14. Bar of jurisdiction. —No order passed or declaration made under this Act shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the Appellate Tribunal or any competent authority is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

15. Competent authority and Appellate Tribunal to have powers of civil court.—The competent authority and the Appellate Tribunal shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, 5 of 1908, in respect of the following matters namely :—

(a) summoning and enforcing the attendenc of any person examining him on oath ;

(b) requiring the discovery and production of documents ;

(c) receiving evidence on affidavits ;

(d) requisitioning any public record or copy thereof from any court or office :

(e) issuing commissions for examination of witnesses or documents ;

(f) any other matter which may be prescribed.

16. Information to competent authority.—(1) Notwithstanding anything contained in any other law, the competent authority shall have power to require any office or authority of the Central Government or a State Government or a local authrity to furnish information in relation

to such persons, points or matter as in the opinion of the competent authority will be useful for, or relevant to the purposes of this Act.

(2) Any officer of the Income-tax Department, the Customs Department or the Central Excise Department or any officer of enforcement appointed under the Foreign Exchange Regulation Act, 1973, (46 of 1973) may furnish *suo motu* any information available with him to the competent authority if in the opinion of the officer such information will be useful to the competent authority for the purposes of this Act.

17. Certain officers to assist competent authority and Appellate Tribunal.—For the purposes of any proceey dings under this Act, the following officers are hereby empowered and required to assist the competent authority and the Appellate Tribunal, namely :—

(a) officers of the Customs Department ;

(b) officers of the Central Excise Department ;

(c) officers of the Income-tax Department ;

(d) officers of enforcement appointed under the Foreign Exchange Regulation Act, 1973 ; (46 of 1973.)

(e) officers of police ;

(f) such other officers of the Central or State Government as are specified by the Central Government in this behalf by notification in the Official Gazette.

18. Power of competent authority to require certain Officers to exercise certain powers.—(1) For the purposes of any proceedings under this Act or the initiation of any such proceedings, the competent authority shall have power to cause to be conducted any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account or anyother relevant matters.

(2) For the purposes referred to in sub-section (1), the competent authority may, having regard to the nature of the inquiry, investigation or survey, require an officer of the Income-tax Department to conduct or cause to be conducted such inquiry, investigation or survey.

(3) Any officer of the Income-tax Department who is conducting or is causing to be conducted any inquiry, investigation or survey required to be conducted under sub-section (2), may, for the purpose of such inquiry, investigation or survey, exercise any power (including the power to authorise the exercise of any power) which may be exercised by him for any purpose under the Income-tax Act, 1961 (43 of 1961.) and the provisions of the said Act shall, so far as may be, apply accordingly.

19. **Power to take possession.**—(1) Where any property has been declared to be forfeited to the Central Government under this Act, or where the person affected has failed to pay the fine due under sub-section (1) of section 9 within the time allowed therefor under sub-section (3) of that section, the competent authority may order the person affected as well as any other person who may be in possession of the property to surrender or deliver possession thereof to the competent authority or to any person duly authorised by it in this behalf within thirty days of the service of the order.

(2) If any person refuses or fails to comply with an order made under sub-section (1) the competent authority may take possession of the property and may for that purpose use such force as may be necessary.

(3) Notwithstanding anything contained in sub-section (2), the competent authority may, for the purpose of taking possession of any property referred to in sub-section (1), requisition the service of any police officer to assist the competent authority and it shall be the duty of such officer to comply whith such requisition.

20. **Rectification of mistakes.**—With a view to rectifying any mistakes apparent from record, the competent authority or the Appellate Tribunal, as the case may be, may amend any order made by it within a period of one year from the date of the order :

Provided that if any such amendment is likely to affect any person prejudicially, it shall not be made without

giving to such person a reasonable opportunity of being heard.

21. **Findings under other laws not conclusive for proceedings under this Act** —No finding of any officer or authority under any other law shall be conclusive for the purposes of any proceedings under this Act.

22. **Service of notices and orders** —Any notice or order issued or made under this Act shall be served;

(*a*) by tendering the notice or order or sending it by registered post to the person for whom it is intended or to his agent :

(*b*) if the notice or order cannot be served in the manner provided in clause (*a*), by affixing it on a conspicuous place in the property in relation to which the notice or order is issued or made, or on some conspicuous part of the premises in which the person for whom it is intended is known to have last resided or carried on business or personally worked for gain.

23. **Protection of action taken in good faith.**—No suit, prosecution or other proceeding shall lie against the Central Government or any officer of the Central or State Government for anything which is done, or intended to be done, in good faith, in pursuance of this Act or the rules made thereunder.

24. **Act to have overriding effect.**—The provisions of this Act shall have effect notwith standing anything inconsistent therewith contained in any other law for the time being in force.

25. **Provisions of the Act not to apply to certain properties held in trust.**—Nothing contained in this Act shall apply in relation to any property held by a trust or an institution created or established wholly for public religious or charitable purposes if—

(*i*) such property has been so held by such trust or institution from a date prior to the commencement of this Act : or

(*ii*) such property is wholly traceable to any property held by such trust or institution prior to the commencement of this Act.

26. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(*a*) the terms and conditions of service of the Chairman and other members of the Appellate Tribunal under sub-section (3) of section 12 :

(*b*) the powers of a civil court that may be exercised by the competent authority and the Appellate Tribunal under clause (f) of section 15 :

(*c*) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

27. (1) Repeal and saving.—The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Ordinance, 1975, (20 of 1975) is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provision of this Act.